CURRENT DECISIONS

ATTORNEYS—DISBARMENT—NO IMMUNITY FROM PREVIOUS COMPULSORY SELF-CRIMINATION.—In a criminal trial an attorney had given testimony which amounted to a confession of professional misconduct. In subsequent disbarment proceedings based on such misconduct, he claimed immunity by force of section 584 of N. Y. Penal Code which provides, in substance, that no person shall be subjected to any penalty or forfeiture on account of anything concerning which he may have been compelled to testify. *Held,* that the statutory immunity from penalties and forfeitures did not prevent disbarment, as disbarment is not punishment but revocation of a privilege conditioned upon honorable professional conduct. *In re Rouss* (1917, N. Y.) 116 N. E. 782.

In construing this section of the code in its application to disbarment proceedings, the case seems to be one of first impression; and the high plane upon which the court places its jurisdiction to disbar is worthy of note. *Cf. Beckner v. Commonwealth* (1907) 126 Ky. 318, 103 S. W. 378.

ATTORNEYS—PRACTICE DURING SUSPENSION AS CONTEMPT.—By order of the Supreme Court each of the defendants was suspended from "practice in all the courts of this state" for one year. During the year they kept open an office, displayed the usual signs indicating that the office was a law office and that they were attorneys at law, used and sent through the mails stationery indicating that they were attorneys, and permitted their names to appear as attorneys in the city and telephone directories. *Held,* that these acts constituted contempt of court. Roberts, J., *dissenting. State v. Marron* (1917, N. M.) 167 Pac. 9.

CARRIERS—HOURS OF SERVICE ACT—COMPUTING TIME.—The Hours of Service Act (U. S. Comp. St. 1916, sec. 8678) forbids keeping certain telegraph operators on duty for more "than 9 hours in any 24 hour period." An operator whose regular day was 7 A. M. to 4 P. M., on one occasion worked from 7 A. M. to 1.30 P. M., was off duty till 3 P. M., then worked till 5.10 P. M. and next day resumed his regular schedule of 7 A. M. to 4 P. M. Thus he worked more than 9 hours out of the 24 hour period beginning at 3 P. M. but not more than 9 hours out of any 24 hour period beginning at 7 A. M. *Held,* that the Act was not violated, since in fairness to the Railway Company the 24 hour period should be construed to begin at the time the employee first goes on duty for his day's work. *United States v. Missouri Pac. Ry. Co.* (1917, C. C. A. 8th) 244 Fed. 38.

CONSTITUTIONAL LAW—DUE PROCESS—PROHIBITION OF MANUFACTURE OF INTOXICATING LIQUORS.—The defendant was charged with violating a Washington statute which provided that it should be unlawful for any person to manufacture, sell, barter, exchange, or give away any intoxicating liquor. His offence consisted in making "grape wine" exclusively for his own personal use. *Held,* that this was an offense prohibited by the statute and that the statute, so construed, was constitutional. *State v. Fabbri* (1917, Wash.) 167 Pac. 133.

This case seems to be the first actually holding it constitutional to forbid the manufacture of liquor for personal use. It is supported by a *dictum* of Mr.

Justice Harlan in *Mugler v. Kansas* (1887) 123 U. S. 623, 8 Sup. Ct. 273. A few recent cases presenting closely similar questions follow this *dictum*. *In re Crane* (1915) 27 Idaho 671, 151 Pac. 1006 (having in possession); *Clark Distillery Co. v. Western Maryland R. R. Co.* (1916) 242 U. S. 311, 37 Sup. Ct. 180 (transporting in interstate commerce). There are many cases to the contrary, holding that the mere possession and use of liquor to satisfy one's own personal tastes, and by inference, at least, the manufacture of liquor for such use, is not injurious to the public health, morals, or welfare and therefore is not subject to the police power. *Commonwealth v. Campbell* (1909) 133 Ky. 50, 117 S. W. 383; *Eidge v. Bessemer* (1909) 164 Ala. 599, 51 So. 246; *Shreveport v. Hill* (1913) 134 La. 351, 64 So. 137.

CONSTITUTIONAL LAW—POLICE POWER—ORDINANCE FORBIDDING ADVERTISING ON WALLS AND BUILDINGS.—Under a municipal ordinance construed as prohibiting the painting of advertising signs on walls and buildings within the city, a fine was imposed upon the plaintiff in error. *Held,* that the ordinance, so construed, was unconstitutional, as it constituted taking private property for public use without compensation. *Anderson v. Shackelford* (1917, Fla.) 76 So. 343.

The case illustrates the persistence of the view of the courts that the police power does not extend to the prohibition of practices which merely violate aesthetic taste. See Freund, *Police Power,* sec. 182; see also Henry T. Terry, *The Constitutionality of Statutes Forbidding Advertising Signs on Property* (1914) 24 YALE LAW JOURNAL 1.

COURTS—JURISDICTION—VIEW IN FOREIGN STATE.—In a divorce proceeding tried without jury, a view of premises located in another state was taken by the judge in the presence of both parties and without exception by the appellant. On appeal from a decree dismissing the complaint the appellant contended that the court had acted without jurisdiction in taking such view. *Held,* that the court did not exceed its jurisdiction since the action of the court corresponded to the taking of a view by a jury, which is regularly done in the absence of the court, and does not require the exercise of judicial functions at the time the view is taken. *Carpenter v. Carpenter* (1917, N. H.) 101 Atl. 628.

The case is noteworthy for its thorough consideration of the nature of a view, as well as for the unusual circumstance that the view was taken outside the state. *Cf. State v. Hawthorn* (1914) 134 La. 979, 64 So. 873.

HUSBAND AND WIFE—AGREEMENT PENDING DIVORCE TO RESUME MARITAL RELATIONS.—During the pendency of divorce proceedings an agreement was made between the parties by which it was provided that they should resume marital relations, that certain community property should be divided, that the wife should dismiss her suit, and that if the husband should thereafter do any act giving her ground for divorce he should thereupon pay her $3,000. Subsequently the wife obtained a divorce for misconduct and sued upon the contract, which the husband contended was against public policy and void. *Held,* that the contract was valid. *Bowden v. Bowden* (1917, Cal.) 167 Pac. 154.

The court draws the valid distinction between contracts which tend to encourage marital misconduct (as when one of the spouses agrees, should the other give ground for divorce, to accept a certain sum in lieu of such alimony as a court might award) and contracts which tend to deter from misconduct, like the one under review, where neither party gave up any marital rights, but the husband assumed, in addition to his marital duties, the obligation to pay some-